

ARTICLE APPEARED
ON PAGE 1CHRISTIAN SCIENCE MONITOR
30 April 1987

US Embassy spy case: fantasy or infamy?

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Washington

By late last December the young US Marine sergeant had decided he was in over his head, according to his lawyer. What had begun as a dalliance had become deadly serious.

By then he was serving as a guard in the United States Embassy in Vienna, and he went to someone there he thought could help - a Central Intelligence Agency officer. He told his story - that a Russian girlfriend's "uncle" was asking him to spy. After interrogation by Navy investigators, the marine was put in detention.

"Instead of investigating, they arrested him," says William Kunstler, lawyer for the marine, Sgt. Clayton J. Lonetree. With that arrest in Vienna began the unraveling of the now-famous Moscow Marine guard spy affair. This week, a key hearing will shed light on whether the legal case against the accused marines will proceed. [Marine leader speaks out, Page 5.]

Defense lawyers maintain that Sergeant Lonetree and the other main defendant, Cpl. Arnold Bracy, are innocents entrapped by overzealous investigators.

Legal papers filed by Marine prosecutors tell a different story. They describe a love-sick Lonetree leading Soviets on a romp through secret US Embassy chambers, while his pal Corporal Bracy sits at a security desk and calmly switches off the ringing alarms.

One thing both sides agree on is that the outcome of the charges against Lonetree, Bracy, and two former Marine guards charged with lesser offenses is very much in doubt. A key confession has been recanted; government interrogations may have been faulty. With its allegations of sex, spies, and secrets, the whole thing sounds like a TV mini-series.

"This has all the earmarks of a great case," observes a private lawyer who is familiar with, but not involved in, the defense.

One element that has added drama to the proceedings is the presence of Lonetree's attorney, the controversial William Kunstler, who represented the defendants in the Chicago 7 riot conspiracy trial in the late 1960s, and in the '70s American Indians accused in the Wounded Knee, S.D., shoot-out with federal officers. Mr. Kunstler is not known

for being demure. Despite being warned by Marine judges not to try the spy case in the news media, he has characterized it publicly as a prosecution motivated by race.

Lonetree is an American Indian; Bracy, his fellow defendant, is black. Kunstler

claims that the Marine Corps is trying to "turn a black man against a red man so they can execute the red man."

Bracy is at this point a key man in the Marine Corps's case. In a signed confession he provided prosecutors with crucial details and corroboration of Lonetree's own extensive confession of spying activities. Bracy talked of the now-famous scene of Soviets being allowed into the inner rooms of the US embassy in Moscow. Before becoming an espionage suspect, he had already been demoted from sergeant and transferred out of the Moscow embassy for fraternizing with Soviet women.

Bracy has recanted this confession, as has another Marine guard who gave similar testimony, according to Bracy's defense attorney, Charles Carter of the NAACP (National Association for the Advancement of Colored People). Mr. Carter says the scenario of Bracy and Lonetree leading spy forays in the embassy was one made up by investigators, who told Bracy that if he didn't agree to it he would never work anywhere again.

"They made up some stuff, and he signed it. He told them it was a bunch of lies. And that's when they charged him, too," says Carter.

The marine defendants face court-martial under the military justice system - not being tried in civil court as were members of the Walker Navy spy ring.

Tomorrow Bracy faces a key juncture when he goes before a hearing that will determine whether there is enough evidence to go to a full trial. It is similar to a grand jury hearing, except that defense counsel can be present and call witnesses. A similar hearing for Lonetree is scheduled for May 11.

Marine officials are tightlipped in response to defense attorneys' public charges, though there is more than a hint of irritation in their "no comments."

Preparation of the prosecution's case has apparently not gone smoothly. Bracy's change of heart is only one of a chain of problems with evidence. According to defense lawyers, Naval Investigative Service detectives did not interrogate Lonetree until two days after he had been

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read his rights - a lapse of time long enough to call into question the legality of the questioning. (Lonetree's 20 pages of confessions, made in various London hotels last December, list numerous meetings with his girlfriend's "Uncle Sasha" at which he allegedly passed along information about personnel and layout of US embassies in Moscow and Vienna.)

Administration officials acknowledge that the marine spy affair is not as simple a case as was that of John Walker, who dropped off classified documents for Soviet spies as the FBI watched.

"These cases may be difficult to prosecute for certain reasons. And [President Reagan] has simply indicated that the people involved should do the best job they can do," said White House spokesman Marlin Fitzwater on Monday.

Five years ago a similar case ended with the defendant walking away a free man. Air Force Lt. Christopher Cooke, then deputy commander of a Titan nuclear missile silo, was accused under the military justice system of passing sensitive information to the Soviet Embassy in Washington. But according to several accounts, military prosecutors bungled their work. They interrogated Lieutenant Cooke without informing him of his right to counsel. They promised him immunity if he would talk, then prosecuted anyway. These violations of due process led to dismissal of the case by the US Court of Military Appeals.

The marine affair "is not the first instance in which questions have been raised as to the ability of the military justice system to handle a case of acute sensitivity," says Eugene Fidell, a Washington lawyer who specializes in military cases.

Mr. Fidell and other private lawyers point out several crucial differences in the military and civil systems of justice. The first is what Fidell calls "command influence" - the fact that any Marine judge who would try the case has no fixed term of office and knows he could be transferred if he displeased superiors. Another is that the members of the court-martial, analogous to the jury in a civil trial, are picked by the commander who brings charges in the first place. The defense is allowed to peremptorily knock out only one of them. For a charge as serious as espionage, it takes only a three-fourths vote of court-martial members to convict, rather than a unanimous vote as in civil trials.

Defense lawyers for Bracy and Lonetree do not feel it is a great disadvantage for their clients to face military justice. They say that the quality and honesty of the prosecution are at least as good as, if not better than that in federal trials.

If convicted of espionage, the Marine guards could be sentenced to death. Until 1985, military personnel could be executed for espionage only if the act occurred during war. In response to the Walker family case, Congress passed an amendment to the Uniform Code of Military Justice making peacetime spying an offense also liable to capital punishment.